

SECOND REGULAR SESSION

HOUSE BILL NO. 1149

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HEGEMAN AND LAWSON (Co-sponsors).

Pre-filed December 6, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3240L.011

AN ACT

To amend chapter 640, RSMo, by adding thereto six new sections relating to the environmental hearing commission.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 640, RSMo, is amended by adding thereto six new sections, to be
2 known as sections 640.800, 640.805, 640.807, 640.812, 640.815, and 640.825, to read as
3 follows:

640.800 1. There is hereby created the "Environmental Hearing Commission"
2 **within the office of administration. The commission shall consist of no more than three**
3 **commissioners appointed by the governor with the advice and consent of the senate. At**
4 **least one commissioner shall be appointed within six months after the effective date of this**
5 **section. The term of each commissioner shall be six years and until his or her successor is**
6 **appointed, qualified and sworn, except that, of the first three commissioners appointed, one**
7 **shall have a term of four years and one shall have a term of two years as designated by the**
8 **governor at the time of appointment. There is no limitation on the number of terms any**
9 **appointed commissioner may serve. If a vacancy occurs the governor may appoint a**
10 **commissioner for the remaining portion of the unexpired term created by the vacancy. The**
11 **governor may remove any appointed commissioner for cause.**

12 **2. The commissioners shall have an interest in and knowledge of environmental**
13 **issues and shall be attorneys at law admitted to practice before the supreme court of**
14 **Missouri, but shall not practice law during their term of office. Any commissioner shall**
15 **recuse himself or herself from any matter involving any person from which such**
16 **commissioner had received significant direct or indirect income during the two years**
17 **immediately prior to such commissioner's appointment to the environmental hearing**

18 commission, including any holder of or applicant for any license or permit issued by the
19 department of natural resources or any commission listed in subsection 1 of section
20 640.805. Each commissioner shall receive annual compensation of ninety-one thousand six
21 hundred and thirty-six dollars plus any salary adjustment provided pursuant to section
22 105.005, RSMo. Each commissioner shall also be entitled to actual and necessary expenses
23 in the performance of his or her duties. The office of the environmental hearing
24 commission shall be located in the City of Jefferson and it may employ necessary clerical
25 assistance, with compensation and expenses of the commissioners to be paid from
26 appropriations from general revenue made for that purpose.

27 3. If a commissioner during his or her term of office becomes temporarily
28 incapacitated by illness or otherwise to perform the duties of his or her office, the governor
29 shall appoint a person to perform the duties of the office during the incapacity of the
30 commissioner. The person appointed shall have all the powers and duties of the office and
31 shall possess all of the qualifications of the office except that he or she may continue in the
32 private practice of law but shall not practice during this period in connection with matters
33 with which the department of natural resources or any commission listed in subsection 1
34 of section 640.805 is involved. He or she shall receive the remuneration provided for the
35 office of commissioner during the time which he or she serves.

36 4. Each commissioner shall have authority to exercise all powers granted to the
37 environmental hearing commission without the concurrence of any other commissioner,
38 except with respect to the rulemaking powers, in which all commissioners must concur.

39 5. The environmental hearing commission shall promulgate such rules as are
40 necessary to implement the provisions of this chapter within one year after the effective
41 date of this section. No rule or portion of a rule promulgated pursuant to this chapter shall
42 become effective unless it has been promulgated pursuant to chapter 536, RSMo.

 640.805 1. All authority to hear appeals of findings, orders, decisions, or
2 assessments on permits, licenses, registrations, administrative penalties, civil penalties,
3 abatement orders, emergency orders, and any other actions that is granted to the director
4 of the department of natural resources in chapters 260, 278, 319, 444, 640, 643, and 644,
5 RSMo, the hazardous waste management commission in chapter 260, RSMo, the state soil
6 and water districts commission in chapter 278, RSMo, the petroleum storage tank
7 insurance fund board in chapter 319, RSMo, the land reclamation commission in chapter
8 444, RSMo, the safe drinking water commission in this chapter, the air conservation
9 commission in chapter 643, RSMo, and the clean water commission in chapter 644, RSMo,
10 shall be transferred to the environmental hearing commission created in section 640.800
11 upon the initial promulgation of rules by the environmental hearing commission pursuant

12 to subsection 5 of section 640.800.

13 2. Except as otherwise provided by law, any person or entity shall have the right
14 to appeal to the environmental hearing commission from any finding, order, decision, or
15 assessment for which the authority to hear appeals was transferred to the environmental
16 hearing commission in subsection 1 of this section. Any person or entity who is a party to
17 such a dispute shall be entitled to a hearing before the environmental hearing commission
18 by the filing of a petition with the environmental hearing commission within thirty days
19 after any such finding, order, decision, or assessment is placed in the United States mail or
20 within thirty days any such finding, order, decision, or assessment is delivered, whichever
21 is earlier.

22 3. Any finding, order, decision, or assessment by the director of the department of
23 natural resources or any commission for which the authority to hear appeals was
24 transferred to the environmental hearing commission in subsection 1 of this section shall
25 contain a notice of the right of appeal in substantially the following language:

26 "If you were adversely affected by this decision, you may appeal to the
27 environmental hearing commission. To appeal, you must file a petition with the
28 environmental hearing commission within thirty days after the date this decision was
29 mailed or the date it was delivered, whichever date was earlier. If any such petition is sent
30 by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is
31 sent by any method other than registered mail or certified mail, it will be deemed filed on
32 the date it is received by the environmental hearing commission.".

33 4. For the purpose of determining whether documents are filed within the time
34 allowed by law, documents transmitted to the environmental hearing commission by
35 registered mail or certified mail shall be deemed filed with the environmental hearing
36 commission as of the date shown on the United States post office records of such
37 registration or certification and mailing. If the document is sent by any method other than
38 registered mail or certified mail, the environmental hearing commission shall deem it to
39 be filed on the date the environmental hearing commission receives it. When the last day
40 prescribed for performing any act prescribed by this chapter or chapter 536, RSMo, or the
41 commission, falls on a Saturday, Sunday, or a legal holiday in this state, the performance
42 of such act shall be timely if it is performed on the next succeeding day which is not a
43 Saturday, Sunday, or legal holiday.

44 5. The environmental hearing commission may promulgate rules and regulations
45 that provide for the filing of documents with the commission by electronic facsimile
46 transmission.

47 6. All matters heard by the environmental hearing commission pursuant to this

48 chapter shall be governed by the provisions of chapter 536, RSMo. The environmental
49 hearing commission shall maintain a transcript of all testimony and proceedings in
50 hearings governed by this section, and copies thereof shall be made available to any
51 interested person upon the payment of a fee which shall in no case exceed the reasonable
52 cost of preparation and supply. Decisions of the environmental hearing commission
53 pursuant to this section shall be binding subject to appeal by either party.

54 7. In the event the person filing the appeal prevails in any dispute pursuant to this
55 section, interest shall be allowed upon any amount found to have been wrongfully collected
56 or erroneously paid at the rate established by the director of the department of revenue
57 pursuant to section 32.065, RSMo.

640.807. No hearing provided for in section 640.805 shall be held less than twenty
2 days after the issuance of a notice of said hearing except with the consent of all parties.
3 Hearings before the environmental hearing commission may be held in any county in the
4 state or any city not within a county, at the discretion of the hearing commissioner after
5 he or she has considered the convenience of the parties involved.

640.812. 1. The method of assignment of petitions, appeals, or other cases may be
2 determined by rule or other agreement between the commissioners. Formal procedural
3 requirements shall not be required of any appeal filed pursuant to any provision of law
4 relating to the environmental hearing commission, and substantial compliance with the
5 requirements of the law relating to the environmental hearing commission shall be deemed
6 sufficient; however, all testimony in any hearing shall be under oath and a commissioner
7 may administer oaths or affirmations to any witness. It shall not be necessary for a person
8 to be represented by counsel to institute any such proceeding, and the environmental
9 hearing commission shall adopt rules and procedures which shall facilitate the filing and
10 processing of such complaints without formal representation.

11 2. The environmental hearing commission may stay or suspend any action of the
12 department of natural resources or any commission listed in subsection 1 of section 640.805
13 pending the environmental hearing commission's findings and determination in the cause.
14 The environmental hearing commission may condition the issuance of such order in any
15 manner, including the posting of a bond or other security in such amount as the
16 environmental hearing commission deems necessary to adequately protect the public
17 interest.

640.815. Except as otherwise provided by law, all final decisions of the
2 environmental hearing commission shall be subject to judicial review as provided in and
3 subject to the provisions of sections 536.100 to 536.140, RSMo. The right to judicial review
4 as provided herein shall also be available to the department of natural resources and any

5 commission listed in subsection 1 of section 640.805 aggrieved by a final decision of the
6 environmental hearing commission.

2 **640.825. In all matters heard by the environmental hearing commission pursuant**
3 **to this chapter, the burden of proof shall be upon the department of natural resources or**
4 **the commission listed in subsection 1 of section 640.805 that issued the finding, order,**
5 **decision, or assessment being appealed, except that in matters involving the denial of a**
6 **permit, license, or registration, the burden of proof shall be on the applicant for such**
7 **permit, license, or registration.**